

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32775
Docket No. MW-32765
98-3-96-3-70**

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline [fifteen (15) day suspension] imposed upon Mr. R. C. Woods for alleged violation of General Notice, Rules L and H-169 of the Maintenance of Way and Signal Department, ' . . . in connection with an incident that occurred on May 12, 1994, at approximately 1300 hours, at MP T-145.8, Sulphur Springs, Texas, in which B&B Helper T. M. Lundy sustained a personal injury ' was unwarranted, without just and sufficient cause and excessive (Carrier's File 013.31-494).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reimbursed for all time lost and his record shall be cleared of the charges leveled against him."**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was disciplined because he allegedly failed to take proper precautions on May 12, 1994 to ensure the safety of his fellow employees. Specifically, the Claimant was charged with having moved certain scaffolding which was being used as the gang was tearing out old stringers and placing steel stringers in the vicinity of a bridge located at Milepost T-145.8.

The Claimant acknowledged that he had moved the scaffolding "to better position [himself] to do the work;" and that he did not "say anything to any of the bridge members that [he] had moved the scaffolding." The Claimant further testified that "normally" when a gang is performing the type of work involved in the instant case it is not necessary to move the scaffolding.

The record evidence establishes that, as a result of the Claimant's having moved the scaffolding and not advising his coworkers that he had done so, B&B Helper Terrell Lundy was injured when he stepped off the steel stringer, anticipating that he would be stepping onto the scaffolding, but instead experienced a circumstance "like stepping on air." As a result, B&B Helper Lundy was injured and required medical treatment.

While the Organization has argued on the Claimant's behalf that the Carrier failed to adequately place the Claimant on notice regarding the Rules he allegedly violated, this Board is persuaded based upon the totality of the evidence that the Claimant understood the nature of the charges against him and was fully prepared to respond to same. Additionally, the Board finds that the evidence in the record supports a conclusion that the Claimant was guilty of violation of several Safety Rules, including Rule L which provides that employees must be alert and attentive in the performance of their duties, and that they must "avoid injury to themselves and others." Accordingly, the claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of September 1998.